



Reprinted
February 26, 2002

ENGROSSED SENATE BILL No. 252

DIGEST OF SB 252 (Updated February 25, 2002 1:50 PM - DI 106)

Citations Affected: IC 6-4.1; IC 29-1; IC 30-4; IC 30-5; IC 32-1; IC 32-4; IC 34-30.

Synopsis: Numerous changes to probate, trust, and tax laws. Changes notice of appraisal requirements. Makes various changes concerning the responsibilities of an attorney in fact. Allows a putative father, for the purpose of inheritance, to execute a paternity affidavit to establish the paternity of a child born out of wedlock. Provides that a person incurs civil liability if, not more than three business days after receiving the power of attorney, the person refuses to accept the authority of an attorney in fact granted under a power of attorney. Provides that a person does not incur civil liability if the person provides the attorney in fact with a written statement not more than ten days after the refusal explaining why: (1) the power of attorney is legally invalid; or (2) the attorney in fact is exercising a power not provided in the power of attorney. Provides that a nonprobate transfer does not include the transfer of a life insurance policy or annuity or payment of death proceeds thereof. Provides that the liability of a nonprobate transferee: (1) may not exceed the value of the nonprobate transfers received or controlled by the nonprobate transferee; and (2) does not include the net contributions of the nonprobate transferee. Repeals a superseded provision concerning the liability of a person who receives payment from a multiple party account for claims against the estate. Makes other changes.

Effective: July 1, 2002.

Zakas, Antich
(HOUSE SPONSORS — WEINZAPFEL, FOLEY)

January 7, 2002, read first time and referred to Committee on Judiciary.
January 31, 2002, amended, reported favorably — Do Pass.
February 4, 2002, read second time, amended, ordered engrossed.
February 5, 2002, engrossed. Read third time, passed. Yeas 48, nays 0.

HOUSE ACTION

February 11, 2002, read first time and referred to Committee on Judiciary.
February 21, 2002, amended, reported — Do Pass.
February 25, 2002, read second time, amended, ordered engrossed.

ES 252—LS 6429/DI 87+



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Second Regular Session 112th General Assembly (2002)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

ENGROSSED SENATE BILL No. 252

A BILL FOR AN ACT to amend the Indiana Code concerning trusts and fiduciaries.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 6-4.1-5-3 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 3. Before ~~he makes~~
3 **making** the appraisal required under section 2(3) of this chapter, the
4 county inheritance tax appraiser shall give notice of the **date**, time, and
5 place of the appraisal, by mail, to ~~(1) each person known to have an~~
6 **interest in the property interests to be appraised; including the**
7 **department of state revenue; and (2) any person designated by the**
8 **probate court and each interested person who filed a request for**
9 **notice and provided a mailing address to the county assessor.** The
10 county inheritance tax appraiser shall appraise the property interests at
11 the time and place stated in the notice.

12 SECTION 2. IC 6-4.1-5-9 IS AMENDED TO READ AS
13 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 9. ~~(a)~~ When the county
14 inheritance tax appraiser files an appraisal report with the probate
15 court, the court shall give twenty (20) days notice **by mail** of the **date**,
16 time, and place of a hearing on the report **to each interested person**
17 **who filed a request for notice and provided a mailing address**

ES 252—LS 6429/DI 87+



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1 under section 3 of this chapter. The court shall give the notice by
 2 mail to all persons known to be interested in the resident decedent's
 3 estate, including the department of state revenue.

4 (b) If the address of a person interested in a resident decedent's
 5 estate is unknown, the probate court shall give notice of the time and
 6 place of the appraisal report hearing by publication. The court shall
 7 publish the notice not less than three (3) successive weeks before the
 8 hearing in a newspaper published in the county.

9 SECTION 3. IC 6-4.1-5-11 IS AMENDED TO READ AS
 10 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 11. The court shall
 11 immediately mail a copy of its determination of the fair market value
 12 of the property interests transferred by a resident decedent and the
 13 inheritance tax due as a result of the ~~decedent's~~ **person's** death to ~~all~~
 14 ~~persons interested in the decedent's estate, including each interested~~
 15 **person who filed a request for notice and provided a mailing**
 16 **address under section 3 of this chapter**, the department of state
 17 revenue, and the county treasurer.

18 SECTION 4. IC 29-1-2-7, AS AMENDED BY P.L.9-1999,
 19 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 20 JULY 1, 2002]: Sec. 7. (a) For the purpose of inheritance (on the
 21 maternal side) to, through, and from a child born out of wedlock, the
 22 child shall be treated as if the child's mother were married to the child's
 23 father at the time of the child's birth, so that the child and the child's
 24 issue shall inherit from the child's mother and from the child's maternal
 25 kindred, both descendants and collaterals, in all degrees, and they may
 26 inherit from the child. The child shall also be treated as if the child's
 27 mother were married to the child's father at the time of the child's birth,
 28 for the purpose of determining homestead rights and the making of
 29 family allowances.

30 (b) For the purpose of inheritance (on the paternal side) to, through,
 31 and from a child born out of wedlock, the child shall be treated as if the
 32 child's father were married to the child's mother at the time of the
 33 child's birth, if one (1) of the following requirements is met:

34 (1) The paternity of a child who was at least twenty (20) years of
 35 age when the father died has been established by law in a cause
 36 of action that is filed during the father's lifetime.

37 (2) The paternity of a child who was less than twenty (20) years
 38 of age when the father died has been established by law in a cause
 39 of action that is filed:

40 (A) during the father's lifetime; or

41 (B) within five (5) months after the father's death.

42 (3) The paternity of a child born after the father died has been

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1 established by law in a cause of action that is filed within eleven
2 (11) months after the father's death.

3 (4) The putative father marries the mother of the child and
4 acknowledges the child to be his own.

5 **(5) The putative father executes a paternity affidavit as set**
6 **forth in IC 16-37-2-2.1.**

7 (c) The testimony of the mother may be received in evidence to
8 establish such paternity and acknowledgment, but no judgment shall be
9 made upon the evidence of the mother alone. The evidence of the
10 mother must be supported by corroborative evidence or circumstances.

11 (d) If paternity is established as described in this section, the child
12 shall be treated as if the child's father were married to the child's
13 mother at the time of the child's birth, so that the child and the child's
14 issue shall inherit from the child's father and from the child's paternal
15 kindred, both descendants and collateral, in all degrees, and they may
16 inherit from the child. The child shall also be treated as if the child's
17 father were married to the child's mother at the time of the child's birth,
18 for the purpose of determining homestead rights and the making of
19 family allowances.

20 SECTION 5. IC 29-1-7-3 IS AMENDED TO READ AS FOLLOWS
21 [EFFECTIVE JULY 1, 2002]: Sec. 3. **(a)** After the death of a ~~testator~~
22 **decedent**, the person having custody of ~~his~~ **the decedent's** will:

23 **(1) may; or**

24 **(2) shall, upon written demand by the personal representative**
25 **or upon court order;**

26 deliver ~~it~~ **the will** to the court which has jurisdiction of the
27 administration of ~~his~~ **the decedent's** estate.

28 **(b)** A verified written application may be filed by or on behalf of
29 any interested person or any personal representative named, in any
30 court having jurisdiction of the administration of the decedent's estate
31 for an order of that court against any person who is alleged to have the
32 custody of the will of the said person so dying, to produce said will
33 before said court at the time fixed by said court in order that said will
34 may be probated. Upon the filing of said application, the court shall
35 cause notice to issue of the filing thereof to the person alleged in said
36 petition to have the custody of said will. If, upon the hearing of said
37 application, the court shall find the allegations thereof to be true, the
38 court shall enter an order directing the person so named in said
39 application to deliver said will within the time fixed in said order, to
40 such person as the court shall designate, so that the same may be
41 offered for probate.

42 **(c)** If the person against whom said order is issued shall, after said

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order shall have been served upon him, fail without just cause to so produce said will at the time so fixed therefor, he shall be guilty of contempt of court and may by said court be committed to the jail of the county in which said court is located, there to remain until he produces said will, or until said order to produce shall have been vacated, and said person so found guilty of contempt shall also be liable to any person interested in the probate of said will for all damages he may sustain by the failure of said person to comply with said order.

SECTION 6. IC 30-4-2.1 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]:

Chapter 2.1. Rules for Interpretation of Trusts

Sec. 1. In the absence of a contrary intent appearing in the trust, a trust shall be construed in accordance with the rules in this chapter.

Sec. 2. (a) Except as provided in subsection (b), in construing a trust naming as beneficiary a person described by relationship to the settlor or to another, a person adopted before:

(1) the person is twenty-one (21) years of age; and

(2) the death of the settlor;

shall be considered the child of the adopting parent or parents and not the child of the natural or previous adopting parents.

(b) If a natural parent or previous adopting parent marries the adopting parent before the settlor's death, the adopted person shall also be considered the child of the natural or previous adopting parent.

(c) A person adopted by the settlor after the person becomes twenty-one (21) years of age shall be considered the child of the settlor. However, no other person is entitled to establish the relationship to the settlor through the child.

Sec. 3. A provision in a trust that provides, or has the effect of providing, that a beneficiary forfeits a benefit from the trust if the beneficiary contests the trust is void.

Sec. 4. (a) Except as provided in subsection (b) and section 5 of this chapter, when a settlor fails to provide in the settlor's trust for a child who is:

(1) born or adopted after the making of the settlor's trust; and

(2) born before or after the settlor's death;

the child is entitled to receive a share in the trust assets. The child's share of the trust assets shall be determined by ascertaining what the child's intestate share would have been under IC 29-1-2-1 if the settlor had died intestate. The child is entitled to receive a share of

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the trust assets equivalent in value to the intestacy share determined under IC 29-1-2-1.

(b) Subsection (a) does not apply to a child of the settlor if:

(1) it appears from the trust that the settlor intentionally failed to provide in the settlor's trust for the child; or

(2) when the trust was executed:

(A) the settlor had at least one (1) child known to the settlor to be living; and

(B) the settlor devised substantially all of the settlor's estate to the settlor's surviving spouse.

Sec. 5. (a) Except as provided in subsection (b), if at the time of the making of the trust, the settlor:

(1) believes a child of the settlor to be dead; and

(2) fails to provide for the child in the settlor's trust;

the child is entitled to receive a share in the trust assets. The child's share of the trust assets shall be determined by ascertaining what the child's intestate share would have been under IC 29-1-2-1 if the settlor had died intestate. The child is entitled to receive a share of the trust assets equivalent in value to the intestacy share determined under IC 29-1-2-1.

(b) Subsection (a) does not apply to a child of the settlor if it appears from the trust or from other evidence that the settlor would not have devised anything to the child had the settlor known that the child was alive.

Sec. 6. If a devise of real or personal property, not included in the residuary clause of the trust, is:

(1) void;

(2) revoked; or

(3) lapses;

the devise becomes a part of the residue and passes to the residuary beneficiary.

Sec. 7. (a) As used in this section, "descendant" includes the following:

(1) A child adopted before the child is twenty-one (21) years of age by:

(A) the settlor; or

(B) the settlor's descendants.

(2) A descendant of a child adopted as set forth in subdivision (1).

(3) A child who is born of the mother out of wedlock, in either of the following circumstances:

(A) The mother is a descendant of the settlor.



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(B) The mother is the settlor.

(4) If the right of a child born out of wedlock to inherit from the father is or has been established in the manner provided under IC 29-1-2-7, the child, in either of the following circumstances:

(A) The father is a descendant of the settlor.

(B) The father is the settlor.

(5) A descendant of a child born out of wedlock as set forth in subdivisions (3) and (4).

(b) If:

(1) an estate, real or personal, is devised to a descendant of the settlor; and

(2) the beneficiary:

(A) dies during the lifetime of the settlor before or after the execution of the trust; and

(B) leaves a descendant who survives the settlor;

the devise does not lapse, but the property devised vests in the surviving descendant of the beneficiary as if the beneficiary had survived the settlor and died intestate.

Sec. 8. Kindred of the half blood are entitled to receive the same trust interest that they would have received if they had been of the whole blood.

SECTION 7. IC 30-4-3-29 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 29. (a) A trustee may be removed as follows:

(1) By the court.

(2) By the person, if any, who by the terms of the trust is authorized to remove the trustee.

(3) Unless the terms of the trust instrument provide otherwise, by a beneficiary of the trust whose petition is granted by the court under subsection (e).

(b) Upon petition by the trustee the court may, in its discretion, permit the trustee to resign if the trustee's resignation will not be detrimental to the trust.

(c) Unless a successor trustee is named in or selected according to a method prescribed in the terms of the trust, the court may appoint a trustee to replace a removed, resigned, or deceased trustee and, on petition by a party to the trust, may appoint a co-trustee if to do so would facilitate more effective administration of the trust. The court shall inquire into the qualifications of a proposed successor trustee and give due consideration to the intentions of the settlor of the trust before appointing a successor trustee.



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(d) For good cause shown, the court may at any time appoint a temporary trustee for such period of time, and to perform such duties, as the court may direct.

(e) This subsection applies only to a trust executed after June 30, 1996. A beneficiary of a trust may petition the court for the removal of a corporate trustee if there has been a change in control of the corporate trustee after the date of the execution of the trust. The court may remove the corporate trustee if the court determines the removal is in the best interests of all the beneficiaries of the trust. For purposes of this subsection a change in control of the corporate trustee occurs whenever a person or group of persons acting in concert ~~acquire~~ **acquires** the beneficial ownership of an aggregate of at least twenty-five percent (25%) of the outstanding shares of voting stock of:

(1) a trustee; or

(2) a corporation controlling a trustee;

after June 30, 1996.

SECTION 8. IC 30-5-5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 1. (a) An attorney in fact has a power granted under this chapter if the power of attorney incorporates the power by:

(1) referring to the descriptive language in sections 2 through 19 of this chapter; or

(2) citing to a specific section of sections 2 through 19 of this chapter.

(b) Reference in a power of attorney to the descriptive language in sections 2 through 19 of this chapter shall be construed as though the entire section is set out in full in the power of attorney.

(c) If powers are similar or overlap, the broadest power controls.

(d) A power of attorney may ~~modify any power incorporated by reference; in writing delete from, add to, or modify in any manner a power incorporated by reference, including the power to make gifts under section 9 of this chapter.~~

SECTION 9. IC 30-5-6-4, AS AMENDED BY P.L.252-2001, SECTION 35, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 4. (a) The attorney in fact shall keep complete records of all transactions entered into by the attorney in fact on behalf of the principal:

(1) for six (6) years after the date of the transaction; or

(2) until the records are delivered to the successor attorney in fact;

whichever occurs first.

(b) Except as otherwise stated in the power of attorney, the attorney



in fact is not required to render an accounting. The attorney in fact shall render a written accounting if an accounting is ordered by a court, requested by the principal, a guardian appointed for the principal, or, upon the death of the principal, the personal representative of the principal's estate, or an heir or legatee of the principal.

(c) An attorney in fact shall deliver an accounting requested under subsection (b) to:

- (1) the principal;
- (2) a guardian appointed for the principal;
- (3) the personal representative of the principal's estate;
- (4) an heir of the principal after the death of the principal; or
- (5) a legatee of the principal after the death of the principal;

not later than sixty (60) days after the date the attorney in fact receives the written request for an accounting. **In the event of the principal's death, an accounting under this subsection must be requested not later than nine (9) months after the date of the principal's death.**

(d) Not more than one (1) accounting is required under this section in each twelve (12) month period unless the court, in its discretion, orders additional accountings.

(e) If an attorney in fact fails to deliver an accounting as required under subsection (c), the person requesting the accounting may initiate an action in mandamus to compel the attorney in fact to render the accounting. The court may award the attorney's fees and court costs incurred under this subsection to the person requesting the accounting if the court finds that the attorney in fact failed to render an accounting as required under this section without just cause.

SECTION 10. IC 30-5-6-4.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 4.5. (a) An attorney in fact has the authority to employ persons, including:**

- (1) attorneys;
- (2) accountants;
- (3) investment advisers; and
- (4) agents;

to assist the attorney in fact in the performance of the attorney in fact's fiduciary duties. Any reasonable costs incurred with regard to services rendered for the benefit of the principal shall be paid from the principal's asset holdings.

(b) Except as provided in subsection (c), if an accounting is requested as set forth in section 4 of this chapter, costs incurred by the attorney in fact:

- (1) to defend the actions of the attorney in fact on behalf of the



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principal with regard to the preparation of the accounting;
and
(2) to defend any other actions of the attorney in fact on
behalf of the principal;
shall be paid from the principal's asset holdings.

(c) If a court determines that an attorney in fact:

(1) breached the attorney in fact's fiduciary duty or obligation
to the principal; or

(2) was engaged in self-dealing activities with the principal's
asset holdings;

the court may determine that the attorney in fact is responsible for
the payment of the costs incurred under subsection (b).

SECTION 11. IC 30-5-9-9, AS AMENDED BY P.L.252-2001,
SECTION 36, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
JULY 1, 2002]: Sec. 9. (a) Except as provided in subsection (b), a
person ~~refusing~~ **who, not more than three (3) business days after
receiving a power of attorney, refuses** to accept the authority of an
attorney in fact to exercise a power granted under a power of attorney
is liable to the principal and to the principal's heirs, assigns, and the
personal representative of the estate of the principal in the same
manner as the person would be liable had the person refused to accept
the authority of the principal to act on the principal's own behalf. In any
action brought in court to either force the acceptance of the authority
of the attorney in fact or pursue damages as a result of the person's
refusal to accept the authority of an attorney in fact, the person found
liable for refusing to accept the authority of an attorney in fact shall pay
the following:

(1) Three (3) times the amount of the actual damages.

(2) The attorney's fees of the person bringing the action to court.

(3) Prejudgment interest on the actual damages from the date the
person refused to accept the authority of the attorney in fact.

(b) A person refusing to accept the authority of an attorney in fact
to exercise a power granted under a power of attorney is not liable
under subsection (a) if:

(1) the person has actual notice of the revocation of the power of
attorney before the exercise of the power;

(2) the duration of the power of attorney specified in the power of
attorney has expired;

(3) the person has actual knowledge of the death of the principal;

(4) the person reasonably believes that the power of attorney is
not valid under Indiana law and provides the attorney in fact with
a written statement **not more than ten (10) business days after**



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1 **the refusal**, describing the reason that the power of attorney is not
2 valid under Indiana law; or

3 (5) the person reasonably believes that the power of attorney does
4 not grant the attorney in fact with authority to perform the
5 transaction requested and provides the attorney in fact with a
6 written statement **not more than ten (10) business days after**
7 **the refusal**, describing the reason the person believes the power
8 of attorney is deficient under Indiana law.

9 (c) This section does not negate the liability a person would have to
10 the principal or the attorney in fact under another form of power of
11 attorney, under the common law, or otherwise.

12 SECTION 12. IC 32-1-4.5-3 IS AMENDED TO READ AS
13 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 3. (a) A nonvested
14 property interest is valid if:

15 (1) when the interest is created, the interest is certain to vest or
16 terminate not later than twenty-one (21) years after the death of
17 an individual then alive; ~~or~~

18 (2) the interest either vests or terminates within ninety (90) years
19 after the interest's creation; **or**

20 **(3) the interest is in a trust and:**

21 **(A) the trust does not:**

22 **(i) require the accumulation of income; and**

23 **(ii) suspend the power of alienation;**

24 **for longer than specified in subdivision (1) or (2); or**

25 **(B) the trust:**

26 **(i) does not require the accumulation of income for**
27 **longer than specified in subdivision (1) or (2); and**

28 **(ii) gives the trustee the power to sell trust assets.**

29 (b) A general power of appointment not presently exercisable
30 because of a condition precedent is valid if:

31 (1) when the power is created, the condition precedent is certain
32 to be satisfied or become impossible to satisfy not later than
33 twenty-one (21) years after the death of an individual then alive;
34 or

35 (2) the condition precedent either is satisfied or becomes
36 impossible to satisfy within ninety (90) years after the condition
37 precedent's creation.

38 (c) A nongeneral power of appointment or a general testamentary
39 power of appointment is valid if:

40 (1) when the power is created, the power is certain to be
41 irrevocably exercised or otherwise to terminate not later than
42 twenty-one (21) years after the death of an individual then alive;



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1 or

2 (2) the power is irrevocably exercised or otherwise terminates
3 within ninety (90) years after the power's creation; or

4 **(3) the power is created in a trust that meets the conditions of**
5 **subsection (a)(3).**

6 (d) In determining whether a nonvested property interest or a power
7 of appointment is valid under subsection (a)(1), (b)(1), or (c)(1), the
8 possibility that a child will be born to an individual after the
9 individual's death is disregarded.

10 SECTION 13. IC 32-4-1.1 IS ADDED TO THE INDIANA CODE
11 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
12 JULY 1, 2002]:

13 **Chapter 1.1. Liability of Nonprobate Transferees for Creditor**
14 **Claims and Statutory Allowances**

15 **Sec. 1. (a) As used in this chapter, "nonprobate transfer" means**
16 **a valid transfer, effective at death, by a transferor:**

17 **(1) whose last domicile was in Indiana; and**

18 **(2) who immediately before death had the power, acting alone,**
19 **to prevent transfer of the property by revocation or**
20 **withdrawal and:**

21 **(A) use the property for the benefit of the transferor; or**

22 **(B) apply the property to discharge claims against the**
23 **transferor's probate estate.**

24 **The term does not include transfer of a survivorship interest in a**
25 **tenancy by the entireties real estate, transfer of a life insurance**
26 **policy or annuity, or payment of the death proceeds of a life**
27 **insurance policy or annuity.**

28 **(b) With respect to a security described in IC 32-4-1.6,**
29 **"nonprobate transfer" means a transfer on death resulting from**
30 **a registration in beneficiary form by an owner whose last domicile**
31 **was in Indiana.**

32 **(c) With respect to a nonprobate transfer involving a multiple**
33 **party account, a nonprobate transfer occurs if the last domicile of**
34 **the depositor whose interest is transferred under IC 32-4-1.5 was**
35 **in Indiana.**

36 **Sec. 2. (a) Except as otherwise provided by statute, a transferee**
37 **of a nonprobate transfer is subject to liability to a decedent's**
38 **probate estate for:**

39 **(1) allowed claims against the decedent's probate estate; and**

40 **(2) statutory allowances to the decedent's spouse and**
41 **children;**

42 **to the extent the decedent's probate estate is insufficient to satisfy**



those claims and allowances.

(b) The liability of the nonprobate transferee may not exceed the value of nonprobate transfers received or controlled by the nonprobate transferee.

(c) The liability of the nonprobate transferee does not include the net contributions of the nonprobate transferee.

Sec. 3. Nonprobate transferees are liable for the insufficiency described in section 2 of this chapter in the following order:

(1) As provided in the decedent's will or other governing instrument.

(2) To the extent of the value of the nonprobate transfer received or controlled by the trustee of trusts that can be amended, modified, or revoked by the decedent during the decedent's lifetime. If there is more than one (1) such trust, in proportion to the relative value of the trusts.

(3) Except as provided in IC 27-1-12-14, other nonprobate transferees in proportion to the values received.

Sec. 4. Unless otherwise provided by the trust instrument, interest of beneficiaries in all trusts incurring liabilities under this chapter shall abate as necessary to satisfy the liability as if all of the trust instruments were a single will and the interests were devised under it.

Sec. 5. (a) A provision made in an instrument may direct the apportionment of the liability among the nonprobate transferees taking under that or any other governing instrument.

(b) If a provision in an instrument conflicts with a provision in another instrument, the later provision prevails.

Sec. 6. Upon due notice to a nonprobate transferee, the liability imposed by this chapter is enforceable in proceedings in Indiana in the county where:

- (1) the transfer occurred;
- (2) the transferee is located; or
- (3) the probate action is pending.

Sec. 7. (a) A proceeding under this chapter may not be commenced unless the personal representative of the decedent's estate has received a written demand for the proceeding from the surviving spouse or a surviving child, to the extent that statutory allowances are affected, or a creditor.

(b) If the personal representative declines or fails to commence a proceeding after demand, a person making demand may commence the proceeding in the name of the decedent's estate at the expense of the person making the demand and not of the estate.



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1 (c) A personal representative who declines in good faith to
 2 commence a requested proceeding incurs no personal liability for
 3 declining.

4 Sec. 8. A proceeding under this chapter must be commenced not
 5 later than nine (9) months after the decedent's death, but a
 6 proceeding on behalf of a creditor whose claim was allowed after
 7 proceedings challenging disallowance of the claim may be
 8 commenced within sixty (60) days after final allowance of the
 9 claim.

10 Sec. 9. Unless written notice asserting that a decedent's probate
 11 estate is insufficient to pay allowed claims and statutory allowances
 12 has been received from the decedent's personal representative, the
 13 following rules apply:

14 (1) Payment or delivery of assets by a financial institution,
 15 registrar, or another obligor to a nonprobate transferee under
 16 the terms of the governing instrument controlling the transfer
 17 releases the obligor from all claims for amounts paid or assets
 18 delivered.

19 (2) A trustee receiving or controlling a nonprobate transfer is
 20 released from liability under this section on any assets
 21 distributed to the trust's beneficiaries. Each beneficiary, to
 22 the extent of the distribution received, becomes liable for the
 23 amount of the trustee's liability attributable to that asset
 24 imposed by sections 2 and 3 of this chapter.

25 SECTION 14. IC 32-4-1.5-7.1 IS ADDED TO THE INDIANA
 26 CODE AS A NEW SECTION TO READ AS FOLLOWS
 27 [EFFECTIVE JULY 1, 2002]: **Sec. 7.1. The liability of a surviving**
 28 **party, P.O.D. payee, or beneficiary for creditor claims and**
 29 **statutory allowances is determined under IC 32-4-1.1.**

30 SECTION 15. IC 32-4-1.6-11.1 IS ADDED TO THE INDIANA
 31 CODE AS A NEW SECTION TO READ AS FOLLOWS
 32 [EFFECTIVE JULY 1, 2002]: **Sec. 11.1. The liability of a beneficiary**
 33 **for creditor claims and statutory allowances is determined under**
 34 **IC 32-4-1.1.**

35 SECTION 16. IC 34-30-2-136.5 IS ADDED TO THE INDIANA
 36 CODE AS A NEW SECTION TO READ AS FOLLOWS
 37 [EFFECTIVE JULY 1, 2002] **Sec. 136.5. IC 32-4-1.1-7 (Concerning**
 38 **personal liability of a personal representative).**

39 SECTION 17. IC 32-4-1.5-7 IS REPEALED [EFFECTIVE JULY
 40 1, 2002].

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SENATE MOTION

Mr. President: I move that Senator Antich be added as second author of Senate Bill 252.

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COMMITTEE REPORT

Mr. President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 252, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 7, reset in roman "any person designated by the".

Page 1, line 8, reset in roman "probate court".

Page 1, line 8, delete "." and insert "**and**".

Page 4, delete lines 9 through 42.

Delete page 5.

Page 6, delete lines 1 through 22.

Page 7, line 4, reset in roman "This subsection applies only to a trust executed after June 30,".

Page 7, line 5, reset in roman "1996.".

Page 7, line 15, delete "." and insert ";".

Page 7, reset in roman line 16.

Page 7, line 38, after "years" insert "**after the date of the transaction**".

Page 8, line 36, after "Any" insert "**reasonable**".

Page 9, delete lines 13 through 42, begin a new paragraph and insert:

"SECTION 11. IC 30-5-9-9, AS AMENDED BY P.L.252-2001, SECTION 36, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 9. (a) Except as provided in subsection (b), a person ~~refusing~~ **who, after a reasonable period of time to review the document, refuses** to accept the authority of an attorney in fact to exercise a power granted under a power of attorney is liable to the principal and to the principal's heirs, assigns, and the personal representative of the estate of the principal in the same manner as the person would be liable had the person refused to accept the authority of the principal to act on the principal's own behalf. In any action brought in court to either force the acceptance of the authority of the attorney in fact or pursue damages as a result of the person's refusal to accept the authority of an attorney in fact, the person found liable for refusing to accept the authority of an attorney in fact shall pay the following:

(1) Three (3) times the amount of the actual damages.

(2) The attorney's fees of the person bringing the action to court.

(3) Prejudgment interest on the actual damages from the date the person refused to accept the authority of the attorney in fact.

(b) A person refusing to accept the authority of an attorney in fact to exercise a power granted under a power of attorney is not liable

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under subsection (a) if:

- (1) the person has actual notice of the revocation of the power of attorney before the exercise of the power;
- (2) the duration of the power of attorney specified in the power of attorney has expired;
- (3) the person has actual knowledge of the death of the principal;
- (4) the person reasonably believes that the power of attorney is not valid under Indiana law and provides the attorney in fact with a written statement **within a reasonable time**, describing the reason that the power of attorney is not valid under Indiana law; or
- (5) the person reasonably believes that the power of attorney does not grant the attorney in fact with authority to perform the transaction requested and provides the attorney in fact with a written statement **within a reasonable time**, describing the reason the person believes the power of attorney is deficient under Indiana law.

(c) This section does not negate the liability a person would have to the principal or the attorney in fact under another form of power of attorney, under the common law, or otherwise."

Page 10, delete lines 1 through 33.

Page 11, line 7, delete "." and insert ", **transfer of a life insurance policy or annuity, or payment of the death proceeds of a life insurance policy or annuity.**".

Page 11, line 25, after "the" insert "**nonprobate**".

Page 11, line 28, after "of the" insert "**nonprobate**".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 252 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 10, Nays 0.



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SENATE MOTION

Mr. President: I move that Senate Bill 252 be amended to read as follows:

Page 7, line 2, delete "after a reasonable period of time to review the" and insert "not more than three (3) business days after receiving a power of attorney,".

Page 7, line 3, delete "document,".

Page 7, line 28, delete "within a reasonable time," and insert "not more than ten (10) business days after the refusal,".

Page 7, line 34, delete "within a reasonable time," and insert "not more than ten (10) business days after the refusal,".

(Reference is to SB 252 as printed February 1, 2002.)

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred Senate Bill 252, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 4, between lines 8 and 9, begin a new paragraph and insert:

"SECTION 6. IC 30-4-2.1 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]:

Chapter 2.1. Rules for Interpretation of Trusts

Sec. 1. In the absence of a contrary intent appearing in the trust, a trust shall be construed in accordance with the rules in this chapter.

Sec. 2. (a) Except as provided in subsection (b), in construing a trust naming as beneficiary a person described by relationship to the settlor or to another, a person adopted before:

- (1) the person is twenty-one (21) years of age; and**
- (2) the death of the settlor;**

shall be considered the child of the adopting parent or parents and not the child of the natural or previous adopting parents.

(b) If a natural parent or previous adopting parent marries the adopting parent before the settlor's death, the adopted person shall also be considered the child of the natural or previous adopting parent.

(c) A person adopted by the settlor after the person becomes twenty-one (21) years of age shall be considered the child of the settlor. However, no other person is entitled to establish the relationship to the settlor through the child.

Sec. 3. A provision in a trust that provides, or has the effect of providing, that a beneficiary forfeits a benefit from the trust if the beneficiary contests the trust is void.

Sec. 4. (a) Except as provided in subsection (b) and section 5 of this chapter, when a settlor fails to provide in the settlor's trust for a child who is:

- (1) born or adopted after the making of the settlor's trust; and**
- (2) born before or after the settlor's death;**

the child is entitled to receive a share in the trust assets. The child's share of the trust assets shall be determined by ascertaining what the child's intestate share would have been under IC 29-1-2-1 if the settlor had died intestate. The child is entitled to receive a share of the trust assets equivalent in value to the intestacy share determined under IC 29-1-2-1.



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- (b) Subsection (a) does not apply to a child of the settlor if:
- (1) it appears from the trust that the settlor intentionally failed to provide in the settlor's trust for the child; or
 - (2) when the trust was executed:
 - (A) the settlor had at least one (1) child known to the settlor to be living; and
 - (B) the settlor devised substantially all of the settlor's estate to the settlor's surviving spouse.

Sec. 5. (a) Except as provided in subsection (b), if at the time of the making of the trust, the settlor:

- (1) believes a child of the settlor to be dead; and
- (2) fails to provide for the child in the settlor's trust;

the child is entitled to receive a share in the trust assets. The child's share of the trust assets shall be determined by ascertaining what the child's intestate share would have been under IC 29-1-2-1 if the settlor had died intestate. The child is entitled to receive a share of the trust assets equivalent in value to the intestacy share determined under IC 29-1-2-1.

(b) Subsection (a) does not apply to a child of the settlor if it appears from the trust or from other evidence that the settlor would not have devised anything to the child had the settlor known that the child was alive.

Sec. 6. If a devise of real or personal property, not included in the residuary clause of the trust, is:

- (1) void;
- (2) revoked; or
- (3) lapses;

the devise becomes a part of the residue and passes to the residuary beneficiary.

Sec. 7. (a) As used in this section, "descendant" includes the following:

- (1) A child adopted before the child is twenty-one (21) years of age by:
 - (A) the settlor; or
 - (B) the settlor's descendants.
- (2) A descendant of a child adopted as set forth in subdivision (1).
- (3) A child who is born of the mother out of wedlock, in either of the following circumstances:
 - (A) The mother is a descendant of the settlor.
 - (B) The mother is the settlor.
- (4) If the right of a child born out of wedlock to inherit from

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the father is or has been established in the manner provided under IC 29-1-2-7, the child, in either of the following circumstances:

(A) The father is a descendant of the settlor.

(B) The father is the settlor.

(5) A descendant of a child born out of wedlock as set forth in subdivisions (3) and (4).

(b) If:

(1) an estate, real or personal, is devised to a descendant of the settlor; and

(2) the beneficiary:

(A) dies during the lifetime of the settlor before or after the execution of the trust; and

(B) leaves a descendant who survives the settlor;

the devise does not lapse, but the property devised vests in the surviving descendant of the beneficiary as if the beneficiary had survived the settlor and died intestate.

Sec. 8. Kindred of the half blood are entitled to receive the same trust interest that they would have received if they had been of the whole blood."

Page 4, line 32, strike "This subsection applies only to a trust executed after June 30,".

Page 4, line 33, strike "1996.".

Page 5, line 1, delete ";" and insert ".".

Page 5, strike line 2.

Page 7, between lines 39 and 40, begin a new paragraph and insert:
"SECTION 12. IC 32-1-4.5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 3. (a) A nonvested property interest is valid if:

(1) when the interest is created, the interest is certain to vest or terminate not later than twenty-one (21) years after the death of an individual then alive; ~~or~~

(2) the interest either vests or terminates within ninety (90) years after the interest's creation; ~~or~~

(3) the interest is in a trust and:

(A) the trust does not:

(i) require the accumulation of income; and

(ii) suspend the power of alienation;

for longer than specified in subdivision (1) or (2); or

(B) the trust:

(i) does not require the accumulation of income for longer than specified in subdivision (1) or (2); and

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(ii) gives the trustee the power to sell trust assets.

(b) A general power of appointment not presently exercisable because of a condition precedent is valid if:

(1) when the power is created, the condition precedent is certain to be satisfied or become impossible to satisfy not later than twenty-one (21) years after the death of an individual then alive; or

(2) the condition precedent either is satisfied or becomes impossible to satisfy within ninety (90) years after the condition precedent's creation.

(c) A nongeneral power of appointment or a general testamentary power of appointment is valid if:

(1) when the power is created, the power is certain to be irrevocably exercised or otherwise to terminate not later than twenty-one (21) years after the death of an individual then alive; or

(2) the power is irrevocably exercised or otherwise terminates within ninety (90) years after the power's creation; or

(3) the power is created in a trust that meets the conditions of subsection (a)(3).

(d) In determining whether a nonvested property interest or a power of appointment is valid under subsection (a)(1), (b)(1), or (c)(1), the possibility that a child will be born to an individual after the individual's death is disregarded."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 252 as reprinted February 5, 2002.)

STURTZ, Chair

Committee Vote: yeas 9, nays 1.

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HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 252 be amended to read as follows:

Page 7, line 4, reset in roman "This subsection applies only to a trust executed after June 30,".

Page 7, line 5, reset in roman "1996.".

Page 7, line 15, after "trustee" delete "." and insert ";".

Page 7, reset in roman line 16.

(Reference is to ESB 252 as printed February 22, 2002.)

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